IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3518 OF 2004

Vilas Shirke ...Applicant

V/s

The State of Maharashtra ...Respondent

Shri. M.S.Mohite for the Applicant.
Shri. M.M.Deshmukh A.P.P. for the Respondent.

CORAM : A.S. OKA, J.
DATED : JUNE 10, 2005.

P.C.:

1. This application is filed by invoking Section 482 of the Code of Criminal Procedure, 1973 for expunging the observations made by the learned Additional Sessions Judge in her Judgment and Order dated 9th March, 2004. This Application is filed by the Applicant who was at the relevant time Senior Inspector of Police attached to Park Site Police Station, Mumbai and now he is an Assistant Commissioner of Police. The Judgment and Order of the learned Sessions Judge was delivered while acquitting an accused who was charged with the offences punishable under sections 354, 506(II) and 376 of the Indian Penal Code. The objection of the Applicant is to a part of paragraph No.5 and paragraph Nos.6 and 7 of the said Judgment which read thus:

"5. No report is filed as to what attempts and efforts were made to secure her presence before the Court.

6. The court adjourned this Case on 21.01.2004, 04.02.2004, 23.02.2004 and today that 09.03.2004. Ultimately, it was said in the Open Court as well as recorded that if the Sr. P.I. of the concenred police station does not look into the matter personally and arrange to file a proper repor. It would be seriously viewed. It has become a practice in recent times that the witnesses are not procured by the police to help the Accused to get an acquittal. I have time and again adjourned this matter with a hope that the witnesses would be produced and the cases of justice would not suffe. Yet there is indolence and total indifference to the observations of this Court and no proper care is taken by the Senior Officers of the police station to protect the case of the complainant due to which the accused get the benefit of acquittal in serious offences.

7. Such indolence of the officers amounts to negligence and dereliction of duty. If I fail to report the same to their higherups I would be falling in my duty towards securing the cause of justice. It cannot be easily reported to the Court that the witnesses are not available. The police have to show what attempt and effort they have made in procuring witnesses. In this case, they have positively failed. Hence, I want to mark a copy of this judgment and order to Commissioner of Police Mumbai for appropriate inquiry an action.

2. The learned counsel for the Petitioner Shri. Mohite pointed out that on the basis of the observations made by the learned Additional Sessions Judge a showcause notice was issued to the Applicant and he has already submitted a detailed reply. The learned counsel invited my attention to the reports

dated 4th February, 2004, 23rd February, 2004 and 9th March, 2004 which were submitted by the Applicant to the learned Additional Sessions Judge. He pointed out that in the said reports the Applicant has set out various efforts made for effecting service of summons on the prosecution witnesses. The learned counsel has relied upon decision of the Apex Court in AIR 2000 Supreme Court 2626 (State of Karnataka Vs. Registrar General, High Court of Karnataka). He submitted that the observations of the learned Judge are uncalled for and need to be expunged.

3. The learned A.P.P. has placed on record a copy of report dated 9th June, 2005 of one Shri. Rathod who is at present Senior Inspector of Police attached to Park Site Police Station, Mumbai. The learned A.P.P. submitted that the observations made by the learned Trial Judge could not have been made in the facts of the case as all efforts were made to procure the presence of the witnesses.

4. I have considered the submissions. Before dealing with the submissions it will be necessary to refer to the observations of the Apex Court in the decision in the case of State of Karnataka Vs. Registrar General

High Court of Karnataka(Supra). In paragraph No.12 the Apex Court has held thus:

> 12. Judicial disposition is definitely different from a paper presented for seminar discussion. Nor can it be equated with a dissertation. Judicial decorum requires that judgments and orders should confine to the facts and legal points involved in the particular cases which Judges deal with. May be, sometimes Judges would, perhaps witingly or even unwittingly, just outside the contours of the litigation, but even such overlappings should be within bounds of propriety and sobriety. But there is no justification for traversing so far beyond the convass as was done by the High Court in this case or to cover areas which are grossly extraneous to the subject matter of the case. If the subordinate Courts are also to be tempted and encouraged to follow suit by travelling far outside the scope of the lis the consequences would be far too many. Demoralisation of departments would badly erode the already impaired efficiency of our forces. It is time to remind ourselves once again that judgment should confine to the scope of the case.

In the case before the Apex Court, the Division Bench of Karnataka High Court had made certain observations. The said observations were as regards the performance of the Police Force. The Apex Court relied upon its earlier decision reported in AIR 1964 S.C. 703, (State of Uttar Pradesh Vs. Mohmad Naim). The Apex Court quoted with approval a paragraph in decision in State of Uttar Pradesh Vs. Mohmad Naim

(Supra) which reads thus:

"It is not infrequent that sweeping generalistations defeat the very purpose for which they are made. It has been judcially recognised that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before a Courts of law in case to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the Court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct justifying the remarks; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct, it has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from the sobriety, moderation and reserve."

5. Coming back to the Judgment of the learned Additional Sessions Judge, in paragraph No.5 learned Additional Sessions Judge has observed that no report was filed placing on record the attempts made to secure the presence of the prosecutrix. The reports submitted by the Applicant which are annexed to the Petition shows that the efforts to locate the prosecutrix were made on different ocassions. The reports discloses that the prosecutrix was not residing at the given address for about last eight years. Thus, the observation made by the learned Sessions Judge in paragraph No.5 regarding not filing of report appears to be incorrect.

6. In so far as the observations made in paragraph No.6 are concerned, a sweeping observation is made that the witnesses are not procured by the Police to help the Accused to get an acquittal. The learned Judge proceeded to hold that there is indolcence and total indifference to the observations made by the learned Judge on earlier dates and no proper care was taken by the Senior Officers to protect the case of the Complainant. It must be noted here that there is no consideration by the learned Judge of the reports which were placed on record by the Applicant. In my view, sweeping and general observations made in paragraph No.6 by the learned Sessions Judge as regards as alleged practice of the Police of not procuring the presence witnesses were totally uncalled for. In my view, the Judgment of the learned Judge ought to have confined to the scope of the case. The anxiety of the learned Judge to do justice in a serious case whether allegation is of commission of offence under Section 376 of the Indian Penal Code can be well understood. However, what is not justified is non consideration of the report submitted by the Applicant and the sweeping observation made in paragraph No.6.

7. In paragraph No.7 of the Judgment the learned Judge has to some extent recorded the finding about the indolence, negligence and dereliction of duty on the part of the Applicant. The learned Judge has accordingly directed that a copy of the Judgment be forwarded to the Commissioner of Police. In my view such observation in paragraph No.7 which may amount to a finding on the conduct of the Applicant could not have been recorded without giving an opportunity to the Applicant to explain his conduct.

8. In my view, the following observations made in the Judgment deserve to be expunged:

"6. It would be seriously viewed. It has become a practice in recent times that the witnesses are not procured by the police to help the Accused to get an acquittal. I have time and again adjourned this matter with a hope that the witnesses would be produced and the cases of justice would not suffer. Yet there is indolence and total indifference to the observations of this Court and no proper care is taken by the Senior Officers of the Police Station to protect the case of the Complainant due to which the accused get the benefit of acquittal in serious offences.

7. Such indolence of the officers amounts to negligence and dereliction of duty. If I fail to report the same to their higherups I would be falling in my duty towards securing the cause of justice. It cannot be easily reported to the Court that the witnesses are not available. The Police have to show what attempt and effort they have made in procuring witnesses. In this case, they have postively failed. hence, I want to mark a copy of this Judgment and order to the Commissioner of police, Mumbai for

appropriate inquiry and action.

9. It will have to be clarified that the reports filed by the Applicants indicate that there were some efforts made by the Police to effect service of summons. A copy of the report dated 9th June, 2005 submitted to the learned A.P.P. by the Senior Inspector is also taken on record.

10. It is necessary to clarify that the Deputy Commissioner of Police will be entitled to consider the explanation dated 21st April, 2004 submitted by the Applicant on its own merits without being influenced by the observations made by the learned Trial Judge which are expunged by this Judgment.

11. Hence, I pass the following order:

: O R D E R :

i) The portion of the Judgment and Order dated 9th March, 2004 set out in paragraph No.8 earlier is ordered to be expunged.

ii) It is clarified that the Applicant had placed on record of the Trial Court the reports showing efforts

made for effecting service of summons on the concerned witnesses including the prosecutrix.

iii) Rule is partly made absolute in above terms.

iv) No orders as to costs.

JUDGE